IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11270 of 2002

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RICHA PATHAK

Versus

SAURASHTRA UNIVERSITY

Appearance:

1. Special Civil Application No. 11270 of 2002

MR NIRAV C THAKKAR for Petitioner No. 1

MR AR THACKER for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/03/2003

ORAL JUDGEMENT

Heard the learned advocates.

After arguing the matter extensively, the learned advocate Mr. Nirav C. Thakkar has sought time with a view to putting certain interrogatories. The request is rejected.

The petitioner before this Court is a Post Graduate Medical student. She has preferred this petition against the decision of the University not to allow her to take final exams held in the month of November, 2002. Under the ad-interim order made on 13th November, 2002 she was permitted to take the said exams in the month of November, 2002. However, her result has been withheld.

The undisputed facts are : The petitioner is a student in Post Graduate Diploma in Ophthalmic Medicine & Surgery [hereinafter referred to as, "the Diploma"]. She was admitted to the Diploma in M.P Shah Medical College affiliated to the Saurashtra University. Admittedly, the petitioner is a student in National Quota i.e. she was admitted through the All India Entrance Examination. She was admitted to the Two Years' Diploma Course commencing in the month of January, 2001. However, her actual admission was done on 4th April, 2001. The petitioner was also informed that she would be allowed to take the examinations due in the month of March/April, 2003. Nevertheless, she was permitted to take examination conducted in the month of November, 2002. But, under the impugned communication dated 12th November, 2002, she was informed that she would not be permitted to take ensuing examination. Therefore, the petition.

Mr. Nirav Thakkar has submitted that all the Diploma students who were admitted in the Course commencing from January, 2001 were due to take examination in the month of November 2002. Since the petitioner was admitted to the course commencing from January, 2001, irrespective of the date of her admission, she should have been allowed to take the exams in the month of November, 2002. Now that the petitioner had actually taken the said examination, her result should be declared. He has submitted that the petitioner was admitted in the month of April, 2001. She was charged fees for the entire course commencing from January, 2001. She was also permitted to attend classes from the month of April, 2001 till the end of the term i.e. June, 2001. Hence, the petitioner legitimately expected that she would be completing the course in the year 2002 alongwith her classmates. Therefore, the petitioner's result should be declared on the principle of legitimate expectancy also. Mr.Thakkar has emphatically submitted

that the petitioner is an eligible student. She has been admitted to the Diploma course through All India Entrance test. There is no reason why she should not have been permitted to take the examination in the month of November, 2002 alongwith other students of the same course. According to Mr. Thakkar, the petitioner was the only student from the national quota to be admitted in the month of April, 2001. Similarly situated students admitted to various courses in the years 1999 and 2000 were granted term from the month of January of the respective year, though they were admitted late i.e. in the month of April of the respective year. Such students were also permitted to take the examination conducted in the month of November of the concerned year. For the details, Mr. Thakkar has relied upon the statement produced at page 32. In the submission of Mr. Thakkar, the petitioner has been singled out in as much as her term beginning from January, 2001 has not been granted. Whereas, such term of the other similarly situated students had been granted. Hence, the petitioner has been meted discriminatory treatment. The petitioner's grievance has been partially mitigated by allowing her to take the examination in the month of November, 2002. Now, the result thereof shall be declared. Mr. Thakkar has also submitted that there was a gross delay in informing the petitioner that she would not be allowed to take the examination in the month of November, 2002 i.e., the petitioner was informed about the same in the previous evening. Thus, there was a gross delay in sending the said information to the petitioner. The petitioner had to make intense preparation for the examination. Therefore also, her result should be declared. He has relied upon the judgments of the Hon'ble Supreme Court in the matters of A. Sudha vs. University of Mysore & Anr. [1987 (4) SCC 537] and of Asheesh Pratap Singh & Ors. vs. Union of India & Ors. [2002 (4) SCC 216].

In answer to the notice issued by this Court, the petition is contested by the Saurashtra University. The learned advocate Mr. Avinash Thacker has appeared on behalf of the University. He has relied upon the Regulation 13.2 of the Post-Graduate Medical Education Regulations, 2000. The Regulation requires that a candidate joining the postgraduate training programme shall attend not less than 80% (eighty percent) of the training during each calender year. Mr. Avinash Thacker has submitted that the petitioner failed to complete the requisite 80% attendance as envisaged in the said Regulation 13.2. He has also relied upon the certificate of registration issued in favour of the petitioner on 4th

April, 2001. The said certificate clearly stipulates that the petitioner was to appear in the examination in March/April, 2003. Mr. Thacker has submitted that the petitioner was informed right from the date of the registration that she should be taking the examination in the month of March/April, 2003. It was an inadvertent mistake that the concerned College allowed the petitioner to take examination in the month of November, 2002. However, on noticing the said mistake, the University had issued direction not to allow the petitioner to take examination in the month of November,2002. Accordingly, the impugned communication was issued by the concerned College. Mr. Thacker has also submitted that though the petitioner had not completed 80% attendance as required under the relevant Regulation, she has succeeded in securing an ad-interim order by misrepresentation. She is thus guilty of suppressing material facts from this Court and also of misrepresentation. The petition deserves to be dismissed on this ground alone. Mr. Thacker has also pointed out that in the previous year i.e. 1999-2000, on account of certain litigations and the orders made by the Court, the concerned students were allowed to keep the term in the month of January of the concerned year, though they were admitted in the month of April of the said year. Eventually, they were permitted to take the examination in the month of November of the concerned year. In support of his arguments, Mr. Thacker has relied upon the judgments of the Hon'ble Supreme Court in the matter of State of Punjab & Ors. v. Sarav Preet & Ors. [2002 (9) SCC 601] and of this Court in the matters of Indian Institute of Management v. Ukakant Shrivastava [2002 (1) GLH 330] and of Jivan Sadhna Rajasthan Hindi Vidya Mandal v. State of Gujarat [2002 (1) GLH (UJ) 5].

In the matter of A. Sudha [Supra], the appellant was admitted to the First Year M.B.B.S course. She was found to be ineligible for such admission. However, she was admitted to the course under bonafide interpretation of the relevant Regulations. In appeal before the Hon'ble Supreme Court, the Hon'ble Court upheld that the appellant was note eligible for admission to First Year M.B.B.S course. However, considering that it was not the fault of the appellant and that the interpretation put by the Principal of the Institute was bona fide, directed that the petitioner be permitted to continue her M.B.B.S course and the result of her First Year M.B.B.S be declared.

In the matter of Asheesh Pratap Singh & Ors. [Supra], after completion of the First Year M.B.B.S

course by the appellants-students, the Hon'ble Supreme Court ordered closure of the said Medical College for want of requisite facilities of Laboratory, Teachers, etc. In the circumstances, the students were protected in as much as the respondents authorities were directed to accommodate the said students in different Medical Colleges in the State. In my view, neither of these two judgments shall lend support to the present petition.

The registration certificate issued to the petitioner on 4th April, 2001 clearly stipulates that the petitioner would take examination in the month of March/April, 2003. Besides, Mr. Nirav Thakkar has admitted that during the relevant calender year, the petitioner had not completed 80% of the attendance. Hence, in my view, the petitioner's claim for allowing her to take examination in the month of November, 2002 is wholly unsustainable. The petitioner though was fully aware of all these relevant facts, neither of these facts has been referred to in the memo of the petition. Thus, the petitioner is guilty of suppression of material facts from this Court and of misrepresentation. As to the students of the previous years, as pointed out in the counter affidavit, they were allowed to take examination in the month of November of the concerned year on account of the Court's order. The said fact, therefore, cannot be held in comparison with the case of the petitioner. Besides, in the matters like the present one, the principle of equality as submitted by Mr. Nirav Thakkar cannot be countenanced. I find no substance in the contention of legitimate expectancy and the delay either. Hence, the petition is dismissed with costs. Notice is discharged. The ad-interim relief stands vacated.

The learned advocate Mr. Nirav Thakkar requests that the petitioner's result be declared alongwith the result of the examination to be conducted in the month of March/April, 2003. The request is rejected.

[Miss R.M Doshit, J.]

Prakash*